

MEMORANDUM

TO: Planning Commission

FROM: Jerry D. Sanders, Assistant County Attorney

DATE: July 19, 2006

MEETING DATE:

RE: REVISIONS TO MONROE COUNTY CODE, SECTION 9.5 – 511
(Amendments to this chapter)

I. BACKGROUND

Section 9.5 – 511 of the Monroe County Land Development Regulations (LDRs) is the provision that outlines the procedure for amending the LDR's. The proposed changes to Section 9.5 – 511 are mainly to clarify the language used in that section and to move general notice provisions from Section 9.5 – 511 to the general notice section, 9.5 – 45. These changes also add the requirement for the posting of notice on the Monroe County website.

II. SUMMARY

The proposed changes are as follows:

1. The language of Section 9.5 – 45 is clarified and made more orderly and easy to read and interpret.
2. General notice provisions that had been in Section 9.5 - 511 were deleted and moved to Section 9.5-45, the general notice provision.
3. Section 9.5 – 511 now requires posting of notice on the Monroe County website.

III. FINDINGS OF FACT

1. Notice requirements were located in this section and notice requirements were also located in other sections of the Land Development Regulations, making them disorderly, confusing and at times repetitive; and
2. All general notice provisions should be located in Section 9.5 – 45; and
3. Notice of all public hearings on land use matters should be posted on the Monroe County website as soon as it is practical to do so; and

4. It is the intent of the BOCC to ensure that the notice requirements within the Land Development Regulations are consistent with the requirements of the Florida Statutes.

IV. PROPOSED TEXT CHANGE

Please see the attached Ordinance.

V. RECOMMENDED ACTION

Based on the findings of fact, it is proposed that the Planning Commission recommend **APPROVAL** of the proposed text change to Section 9.5 – 511 of the Monroe County Land Development Regulations.

ORDINANCE NO. – 2006

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 9.5-511; DELETING NOTICE PROVISIONS AND REFERRING TO 9.5-45 AND; PROVIDING THAT NOTICE OF ALL PUBLIC HEARINGS SHALL BE POSTED ON THE MONROE COUNTY WEBSITE; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING AN EFFECTIVE DATE AND; PROVIDING FOR FILING IN THE OFFICE OF THE SECRETARY OF STATE OF THE STATE OF FLORIDA AND TRANSMITTAL TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, the Monroe County Board of County Commissioners (BOCC), after public hearing(s), has reviewed and considered the proposed amendments to the Land Development Regulations (LDRs), comments of the public, recommendations of the Planning Commission, recommendations of staff, and other matters; and

WHEREAS, the BOCC hereby makes the following Findings of Fact:

1. Notice requirements were located in this section and notice requirements were also located in other sections of the Land Development Regulations, making them disorderly, confusing and at times repetitive; and
2. All general notice provisions should be located in Section 9.5 – 45; and
3. Notice of all public hearings on land use matters should be posted on the Monroe County website as soon as it is practical to do so; and
4. It is the intent of the BOCC to ensure that the notice requirements within the Land Development Regulations are consistent with the requirements of the Florida Statutes.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Section 9.5, Monroe County Code, is hereby amended to read as follows:

Sec. 9.5-511. Amendments to this chapter.

(a) *Purpose:* The purpose of this article is to provide a means for changing the text of this chapter **which includes the land use district map**. It is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, nor to permit a change in community character, as analyzed in volume I of the plan, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the board of county commissioners shall consider, in addition to the factors set forth in this article, the consistency of the proposed amendment with the provisions and intent of the plan.

(b) *Authority:* The board of county commissioners may amend the text of this chapter upon the compliance with the provisions of this article. Amendments may be proposed by the board of county commissioners, the planning commission, the director of planning, or the owner or other person having a contractual interest in property to be affected by a proposed amendment. The director of planning shall have the responsibility to establish the format as approved by the board of county commissioners by which applications can be submitted and shall have the authority to screen those amendments, processing only those which are presented on a complete application; and those deemed insufficient shall be returned to the applicant for correction and resubmittal within twenty-one (21) days.

(c) *Timing:* Applications for map and text amendments to this chapter shall be accepted at any time. The planning director shall review and process the map and text amendment applications as they are received and pass them on to the development review committee and the planning commission for recommendation and final approval by the board of county commissioners.

(d) *Procedures:*

(1) *Proposals by board of county commissioners, planning commission or director of planning:* Proposals for amendments by the board of county commissioners, the planning commission or the director of planning shall be transmitted to the planning department and the development review committee for review and recommendation to the planning commission.

(2) *Proposals by affected landowners:* Any landowner or other person having a contractual interest in property desiring to petition the board of county commissioners for an amendment to the land use district map shall be required to file an application with the director of planning accompanied by a nonrefundable application fee as established from time to time by the board of county commissioners to defray the actual cost of processing the application [see section 9.5-522]. The director of planning shall transmit the proposed amendment to the planning department and the development review committee for review and preparation of a recommendation to the planning commission.

(3) *Public hearing(s):* The planning commission and the board of county commissioners ~~each~~ shall each hold at least one (1) public hearing on a proposed amendment to the text of this chapter or to the land use district map.

a. *Notice:* Notice of a proposed amendment to ~~either~~ the text of this chapter ~~or which includes~~ the land use district map shall be provided as required by Section 9.5 – 45 of this code, by publication of advertisements of all required public hearings, the advertisements to be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisements to be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements

~~appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community, not one of limited subject matter. It is the intent that, whenever possible, the advertisements shall appear in a newspaper that is published at least five (5) days a week. The advertisements for amendments to the land use map shall be in the following form:—~~

**~~NOTICE OF CHANGE OF LAND-USE
REGULATIONS~~**

~~Monroe County proposes to regulate the use of land within the area shown in the map in this advertisement.~~

~~Public hearings on the proposal will be held on (date and times) at (meeting places).~~

~~The advertisements also shall contain a geographic location map which clearly indicates the area covered by the proposal. The map shall include major street names as a means of identification of the area.~~

~~(i) The advertisement for an amendment to the text of this chapter shall state in a brief form the nature of the amendment to be considered at the public hearing.~~

~~(ii) Notice by publication shall be provided, in the case of amendments to the land use district map, at least thirty (30) days prior to any required public hearing and in the case of amendments to the text of this chapter at least fifteen (15) days prior to any required public hearings.~~

b. *Posting of notice:* Posting of notice shall be made At least thirty (30) days prior to any public hearing required under this section, the planning department shall post on the property that is the subject of the hearing a sign or signs in accordance with the requirements of section 9.5-45.

c. *Other notice:* Notice of all public hearings shall be ~~mailed to all organizations, associations and other interested persons or groups which have registered with the department of planning and paid an annual fee to defray the cost of mailing.~~ posted on the Monroe County Website as soon as is practical. Failure to

post notice on the Monroe County Website shall not constitute grounds for the cancellation of any public hearing nor shall it constitute grounds for the cancellation of any action taken by a board at such a meeting.

(4) *Action by planning commission:* The planning commission shall review the application, the reports and recommendations of the department of planning and the development review committee, and the testimony given at the public hearing, and shall submit its recommendations and findings to the board of county commissioners.

(5) *Action by board of county commissioners following public hearing(s):*

a. The board of county commissioners shall consider the report and recommendation of and the testimony given at the public hearings.

b. The board of county commissioners may consider the adoption of an ordinance enacting the proposed change based on one (1) or more of the following factors:

- (i) Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;
- (ii) Changed assumptions (e.g., regarding demographic trends);
- (iii) Data errors, including errors in mapping, vegetative types and natural features described in volume I of the plan;
- (iv) New issues;
- (v) Recognition of a need for additional detail or comprehensiveness; or
- (vi) Data updates;

however, in no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located.

c. In the event of a written protest against such amendment signed by the owners of twenty (20) percent or more either of the area of the lots or land included in the proposed amendment or of the lots or land immediately adjoining the property to be affected and extending two hundred (200) feet therefrom, such amendment shall not become effective except by the favorable vote of four (4) members of the board of county commissioners.

d. Except as provided in paragraph (c) above, the board of county commissioners may adopt the proposed amendment or the proposed amendment as modified by not less than a majority of its total membership.

(e) *Typographical or Drafting Errors:* Amendments to the text to correct typographical or drafting errors may be adopted by the board of county commissioners without posted notice or public hearing at any regular meeting. As long as the county is within an area of critical state concern, notice of such amendments shall be transmitted to the Florida Department of Community Affairs within thirty (30) days.

* * * * *

Section 2. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, cause or sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 3. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any federal or state law, rule, code or regulation, the more restrictive shall apply. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict. However, the suspension of conflicting laws or rules as provided for under F.S. 252.46(2) is intended to and shall apply.

Section 4. Filing.

This ordinance shall be filed with the Office of the Secretary of State of the State of Florida and shall not become effective prior to or without a notice issued by the Florida Department of Community Affairs or Florida Administration Commission approving the ordinance.

Section 5. Transmittal.

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

Section 5. Effective Date.

This ordinance shall become effective as provided by law and stated above. Where Comprehensive Plan amendments may be required in order for any part of this ordinance to be deemed consistent with the Comprehensive Plan, the effective date of such part shall be as of the effective date of the required Comprehensive Plan amendment and as otherwise required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the ___ day of _____, 2006.

Mayor Charles "Sonny" McCoy	_____
Mayor Pro Tem Dixie Spehar	_____
Commissioner George Neugent	_____
Commissioner David Rice	_____
Commissioner Glenn Patton	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Mayor/Chairman

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

By: _____
Deputy Clerk

Approved as to form:

County Attorney